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C O N F I D E N T I A L MANILA 000121

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E.O. 12958: DECL: 01/10/2017
TAGS: PREL MARR CASC KCRM RP
SUBJECT: MARINE CASE: NEXT LEGAL STEPS

REF: MANILA 64 AND PREVIOUS

Classified By: A/DCM Scott Bellard, reasons 1.4 (b) and (d)

¶1. (C) In a meeting with a III MEF representative on January 10, the defense counsel for Lance Corporal Daniel J. Smith outlined the timeline for upcoming legal steps in the appeal of the December 4 rape conviction by the Makati Regional Trial Court:

-- the Makati Regional Trial Court is now apparently collating all evidence and other documents (the "certified and complete record") and will formally submit this to the Court of Appeals imminently;

-- the clerk of the Court of Appeals will inform the defense counsel and the Solicitor General when the Court has formally accepted the lower court's record and has raffled off the case within the Court of Appeals;

-- defense counsel will then have 30 days to file an appellant's brief (the defense counsel indicated he would file on the last day of this period and not before);

-- once the defense counsel has filed his appeal, the Solicitor General has 30 days to file the government's brief;

-- the Solicitor General may request -- and is usually granted -- an additional 90 days to file its brief (comment: Embassy will press Solicitor General to file within thirty days in the interest of a speedy appeal. end comment);

-- the defense counsel will then have 20 days to file a reply brief to the Solicitor General's brief;

-- the Court of Appeals will then likely request the defense and the Solicitor General to submit briefs summarizing arguments and would provide 30 days for such filings.

¶2. (C) The defense counsel strongly recommended to the III MEF rep, as well as earlier to Pol/C, that his client undertake at least one major public relations event -- perhaps a televised interview -- to help counter the complainant's numerous media appearances and to build public support for Lance Corporal Smith. We do not currently believe that media appearances are in the Defendant's or the USG's interest, though they may provide his lawyer with added publicity. We will submit any specific requests for Washington decision.

¶3. (C) It appears that May would be the earliest possible ruling by the Court of Appeals on the Defendant's appeal of the verdict. We will seek further information on possible timing of cases filed with the Supreme Court by the Private Prosecutor on the Defendant's transfer to U.S. custody and on

the constitutionality of Article V paragraph 6 of the VFA.

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